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No. 85408-4

RECEIVED BY E-MAIL
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MICHAEL W. GENDLER,

Plaintiff/Respondent,

vs.

JOHN R. BATISTE, Washington State Patrol Chief,

Defendant/Petitioner.

and

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION,

Intervenor/Petitioner.

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SUPREME COURT
STATE OF WASHINGTON
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BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

George M. Ahrend
WSBA No. ~~25106~~ 25160
100 E. Broadway Avenue
Moses Lake, WA 98837
(509) 764-9000

Bryan P. Harnetiaux
WSBA No. 5169
517 E. 17th Avenue
Spokane, WA 99203
(509) 624-3890

On Behalf of
Washington State Association for Justice Foundation

ORIGINAL

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, along with an interest in the rights of citizens seeking disclosure of vehicle accident information under the Public Records Act, Ch. 42.56 RCW (PRA), and the effect of 23 U.S.C. § 409 on such disclosure.¹

II. INTRODUCTION AND STATEMENT OF THE CASE

This case primarily involves the question whether a memorandum of understanding (MOU) between two state agencies, the Washington State Patrol (WSP) and the Washington State Department of Transportation (WSDOT), regarding WSP vehicle accident records, prevents the unconditional public disclosure of such records under the holdings in Guillen v. Pierce County, 144 Wn.2d 696, 31 P.3d 628, 34 P.3d 1218 (2001) (Guillen I), *rev'd in part*, 537 U.S. 129 (2003) (Guillen

¹ Counsel for plaintiff/respondent Michael Gendler includes members of the law firm of Stritmatter Kessler Whelan Coluccio. Paul Stritmatter is a principal in this firm, and also serves on the Board of Directors of the WSAJ Foundation. Neither Mr. Stritmatter nor any member of his firm has been involved in the WSAJ Foundation Amicus Committee's determination to seek amicus curiae status in this case or in the preparation of this brief.

II). The underlying facts are drawn from the MOU, the briefing of the parties and the Court of Appeals opinion. See MOU (CP 205-17)²; State Br. at 5-14; Gendler Br. at 3-16; State Pet. for Rev. at 4-11; Gendler Ans. to Pet. for Rev. at 2-9; State Supp. Br. at 3-10; Gendler v. Batiste, 158 Wn.App. 661, 242 P.3d 947 (2010), *review granted*, 171 Wn.2d 1001 (2011).

For purposes of this amicus curiae brief, the following facts are relevant: Michael W. Gendler was injured in a bicycle accident on the Montlake Bridge in Seattle. After learning that other bicyclists may have been injured in the same location in the same way, Gendler submitted requests to WSP under the PRA for a list of bicycle accidents at that location, and copies of police reports involving other bicycle accidents at that location. See Gendler, 158 Wn.App. at 665 & 673 n.5.

Accident participants and law enforcement officers are required to report vehicle accidents—including bicycle accidents—involving a fatality, personal injury, or property damage in excess of \$700. See RCW 46.52.030(1) (reports by drivers); RCW 46.52.040 (reports by passengers); RCW 46.52.030(3) (reports by “law enforcement officers”); RCW 46.52.070(1)-(3) (reports by “police officers”); see also RCW 46.04.4141 (defining “police officer”); RCW 46.04.670 (defining

² The MOU, with CP references (but excluding supplements regarding funding, CP 213-17), is included in the Appendix to Gendler’s Answer to the Petition for Review. It is reproduced in the Appendix to this brief.

"vehicles" to include bicycles); WAC 446-85-010 (establishing \$700 property damage threshold).³

All vehicle accident reports are forwarded to the Chief of WSP. See RCW 46.52.030(2). The Chief then has the duty "to file, tabulate, and analyze all accident reports" and periodically publish statistical information showing the location of accidents, among other things. See RCW 46.52.060. This duty has been imposed on the Chief of WSP since 1937. See Laws of 1937, ch. 189, § 138.⁴

There is a dispute between the parties whether WSP provided vehicle accident records by location in the past. According to the Court of Appeals below, in fulfilling its duty under RCW 46.52.060, WSP provided vehicle accident histories at particular locations for many years, although its ability to do so was apparently limited to some degree by the nature of its record storage and retrieval system. See Gendler at 669 & n.2; see also Gendler Br. at 7-8; Gendler Ans. to Pet. for Rev. at 4. According to the State, there is no evidence that WSP ever reported collisions at precise locations. See State Supp. Br. at 9-10.⁵

³ While accident participants are sometimes required to report vehicle accidents, Gendler's request does not appear to encompass these reports. See Gendler at 665 (requesting list of accidents); id. at 673 n.5 (quoting request for police reports). Reports by police or other law enforcement officers are referred to in this brief as "Police Traffic Collision Reports" or "PTCRs." See id. at 668.

⁴ The current versions of RCW 46.52.030, 46.52.060 & 46.52.070 are reproduced in the Appendix to this brief.

⁵ It is not clear from the appellate briefing whether the State's characterization of the facts is based on the lack of past disclosure of location accident histories, or whether it is based on a lack of accuracy or precision of such disclosures. See State Br. at 9; Gendler Br. at 7-8; State Pet. for Rev. at 19.

When Gendler requested vehicle accident records from WSP, he was informed that the agency does not store them by location, and that it could not therefore provide him with a listing of bicycle accidents at the Montlake Bridge. See Gendler at 665. He was told he could obtain specific PCTRs of bicycle accidents at that location from the WSP website, but only on condition that he would agree not to use them in connection with any lawsuit against the State of Washington or other governmental entities. See id. at 665 & n.1; State Br. at 5.

Gendler refused to agree to the condition and brought suit against John R. Batiste, in his capacity as Chief of WSP, to compel unconditional disclosure of the records under the PRA. See Gendler at 665.⁶ WSDOT was allowed to intervene in the lawsuit over Gendler's objection. On cross motions for summary judgment, the superior court ordered unconditional disclosure of the records, and the Court of Appeals affirmed. See id. at 666 & 673-75.⁷

In the superior court and on appeal, the State argues that the records requested by Gendler are "privileged" under 23 U.S.C. § 409, which precludes the discovery or litigation use of data compiled or collected for purposes of compliance with federal highway safety programs. See Guillen II, 537 U.S. at 143-46. WSDOT compiles and collects such data to receive federal funding, and to identify and prioritize

⁶ Gendler brought a separate tort action against the State for his injuries that has been settled. See State Supp. Br. at 3 & n.1.

⁷ Because WSP and WSDOT have presented a united defense in the appellate courts, they are referred to collectively as the "State" in this brief.

locations for highway safety improvements, under what is known as the Hazard Elimination Program of 1973. See 23 U.S.C. § 152.

In 2003 (after the opinion in Guillen II), WSDOT entered into the MOU with WSP. See Gendler at 670. The MOU is based on the Interlocal Cooperation Act, Ch. 39.34 RCW, which allows state agencies to exercise their respective authority jointly and cooperatively. See MOU at 1; see also RCW 39.34.030(1) (allowing joint action). The stated purpose of the MOU is “to grant WSDOT access to collision records ... received by WSP under the authority granted to WSP by RCW 46.52.030.” MOU at 1. Although the MOU does not mention the § 152 Hazard Elimination Program, WSDOT states that the data collected from WSP records is for purposes of complying with the program. See Gendler at 668.

Under the terms of the MOU, WSP’s Collision Records Section is “co-located” with WSDOT’s Transportation Data Office. See MOU at 1, ¶ 1(a). Vehicle accident reports received by WSP in both paper and electronic media are stored using equipment and services provided by WSDOT. See id. When paper reports are received, they are scanned and the paper copy is destroyed. See id. at 1, ¶ 1(c). The scanned image of the report is deemed to be “the report of record.” Id.

Under the MOU, the original reports and the scanned images remain the property of WSP. See MOU at 2, ¶ 2. The MOU does not limit WSP’s access to, or use of, its reports. See id. It does not otherwise address data analysis performed by WSP, such as that required by

RCW 46.52.060. See id. Apparently, WSP indexes reports by number, name of individuals involved, date of collision, name of roadway, and county. See State Br. at 11; State Pet. for Rev. at 8; Gendler Br. at 10-11; Gendler Ans. to Pet. for Rev. at 6.⁸

WSP grants access to WSDOT to both paper and electronic media versions of the reports. See MOU at 1, ¶ 1(b). WSP also grants a nonexclusive license to WSDOT to use copies of the scanned images of the reports. See id. at 2, ¶ 2. Data collected and tabulated by WSDOT from the reports is deemed to be the property and responsibility of WSDOT. See id.

The MOU provides for disclosure of “collision record information” in accordance with applicable law and a “Collision Records Policy,” which is attached and incorporated into the MOU. See MOU at 1, ¶ 1(d); id. at 4-8. The Collision Records Policy makes a distinction between “collision records” and “collision data.” See id. at 4, ¶ 1(b). Under the policy, “collision records” consist of vehicle accident reports and supporting documents in whatever form. See id. These include, but are not limited to the police reports known as PTCRs. See id. Collision records are acknowledged to be “under the authority of WSP.” See id. WSP’s public disclosure policy governs the release of these records. See id. at 8, ¶ 5(e); see also Ch. 446-10 WAC (WSP public disclosure regulations).

⁸ Cf. WAC 308-330-240 (requiring local government entities to file copies of accident reports to be filed “alphabetically by location” using “a suitable system of filing” under the Washington Model Traffic Ordinance, adopted by the Washington State Department of Licensing).

“Collision data,” on the other hand, consists of “WSDOT electronic files containing data derived from [WSP records].” See MOU at 4, ¶ 1(b). Collision data is described in terms of data analysis performed by WSDOT. See id. (The policy does not reference data analysis required of or performed by WSP under RCW 46.52.060.) WSDOT’s public disclosure policy governs the release of collision data. See MOU at 8, ¶ 5(e); see also Ch. 468-06 WAC (WSDOT public disclosure regulations).

Requests to WSP for copies of collision records (as opposed to collision data) must be submitted in writing to the WSDOT’s Collision Records Request Section, on a form prescribed by WSDOT, although the forms are approved by WSP and contain the official WSP logo. See MOU at 4, ¶ 2(a)(1); id. at 7, ¶ 5(a)(1). Requests for collision records in the form of individual PTCRs must be based on an involved person’s name or a report number, see id. at 5, ¶ 2(a)(5), even though WSP also indexes PTCRs by name of roadway, among other things. See State Br. at 11; State Pet. for Rev. at 8; Gendler Br. at 10-11; Gendler Ans. to Pet. for Rev. at 6.

Under the MOU and the Collision Records Policy, requests to WSP for multiple PTCRs “based solely on a location will be treated as a request for collision data, and the request will be referred to the WSDOT’s Collision Data and Analysis Branch[.]” MOU at 5, ¶ 2(a)(5). The MOU does not address requests for multiple PTCRs based on non-location criteria or a combination of location and other criteria. See id. Before receiving multiple PTCRs based on location, the requester must certify on

the relevant form that s/he will not use them in any current, pending or anticipated litigation against state, tribal or local government involving a collision at the location in question. See Gendler at 665 n.1; see also State Br. at 12 & n.4 (describing process for obtaining vehicle accident information by location).⁹

Ultimately, based on the foregoing arrangement,¹⁰ the State argues that requests for lists of accidents and PTCRs by location fall within the § 409 privilege because WSDOT accesses and analyzes them for purposes of compliance with the § 152 Hazard Elimination Program. See State Br. at 21-22; State Pet. for Rev. at 13-17. The Court of Appeals below rejected this argument based on WSP's independent statutory obligation to collect, file, tabulate, analyze and publish vehicle accident records, and to make such information available under the PRA. See Gendler at 675. The State petitioned for review, challenging the Court of Appeals determination that the § 409 privilege is inapplicable, and its determination that WSP is required to disclose the information requested by Gendler under the PRA. See State Pet. for Rev. at 1-2.¹¹ This Court granted review.

⁹ The condition on disclosure is not referenced in the MOU. WSDOT Form 780-30 is referenced in the MOU at 4, ¶ 2(a)(1), but it is not known whether this form includes the condition. Gendler was asked to sign WSDOT Form 780-032 EF, which does include the condition. See Gendler at 665 n.1.

¹⁰ Although the MOU has apparently led to the creation of an integrated WSP-WSDOT database, there is nothing in the MOU that discusses or creates such an integrated database. Instead, the MOU merely states that WSDOT shall provide equipment and services necessary for the storage of PTCRs and other vehicle accident records of WSP at the same location as WSDOT's Collision Records Section, and that WSDOT will have access to and a license to use WSP vehicle accident records. See MOU at 1, ¶ 1(a); id. at 2, ¶ 2.

¹¹ The State also suggests, in its argument supporting review, that in Guillen I this Court erroneously determined that PTCRs are subject to discovery in tort litigation. See State Pet. for Rev. at 11-13 & nn.4-6; see also State Supp. Br. at 19-20.

III. ISSUES PRESENTED

1. Whether the requested WSP vehicle accident records by location are subject to disclosure under the PRA?
2. If so, whether the MOU has the effect of rendering vehicle accident records by location privileged under 23 U.S.C. § 409?

IV. SUMMARY OF ARGUMENT

The discovery and evidentiary "privilege" under 23 U.S.C. § 409 for materials compiled or collected by WSDOT in order to participate in federal highway safety programs does not extend to police accident reports and related information generated and received by WSP for state purposes. The § 409 privilege is narrowly construed, and is inapplicable to information collected or compiled for state purposes and held by a state agency for those purposes.

As a matter of Washington state law, the vehicle accident information requested by Gendler is received and generated by WSP pursuant to Ch. 46.52 RCW, and is subject to disclosure under the PRA. The fact that WSP vehicle accident information is stored in an integrated electronic database, along with additional information compiled by WSDOT, does not transform the law enforcement purposes for which it is originally collected or compiled. The MOU entered between WSP and WSDOT does not, and cannot, provide otherwise. WSP retains statutory responsibility, ownership, and access to the vehicle accident information stored in the integrated database. This information is subject to disclosure

under the PRA to the same extent as it was under the former Public Disclosure Act (PDA), Ch. 42.17 RCW, as the Court held in Guillen I.

V. ARGUMENT

A. Overview Of 23 U.S.C. § 409 As Construed By The U.S. Supreme Court In *Guillen II*.

23 U.S.C. § 409 provides:

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

In Guillen II, the U.S. Supreme Court held that this provision must be construed narrowly because it creates a privilege that impedes the search for truth. See 537 U.S. at 144-45. Accordingly, § 409 “does not protect information that was originally compiled or collected for purposes unrelated to § 152 and that is currently held by the [state or local] agencies that compiled or collected it, even if the information was at some point ‘collected’ by another [state or local] agency for § 152 purposes.” Id. at 144; see also id. at 145-46 (stating § 409 is “inapplicable to information compiled or collected for purposes unrelated to § 152 and held by agencies that are not pursuing § 152 objectives”). Guillen II specifically recognizes that:

an accident report collected only for law enforcement purposes and held by the county sheriff would not be protected under § 409 in the hands of the county sheriff, even though that same report would be protected in the hands of the Public Works Department, so long as the department first obtained the report for § 152 purposes.

Id. at 144.¹²

This approach is consistent with the purpose of § 409 to remove a disincentive for states, in the form of potential tort liability, to collect information necessary to participate in federal highway safety programs. See 537 U.S. at 146. Guillen II concludes that § 409 is not intended to make tort victims worse off than they would be if the federal programs never existed, and “there is no reason to interpret § 409 as prohibiting the disclosure of information compiled or collected for purposes unrelated to § 152, held by government agencies not involved in administering § 152, if, before § 152 was adopted [in 1973¹³], plaintiffs would have been free to obtain such information from those very agencies.” Id. at 146; see also Guillen I, 144 Wn.2d at 748 (Madsen, J., concurring).

Having delineated the proper scope and limits of § 409, the U.S. Supreme Court in Guillen II remanded the case back to the Washington courts. See 537 U.S. at 147-48. The question presented here is whether vehicle accident data received or generated by WSP is for state law purposes, independent of the § 152 Hazard Elimination Program.

¹² This is also the view espoused by the concurring opinion in Guillen I, 144 Wn.2d at 750-51 (Madsen, J., concurring).

¹³ See Pub. L. No. 93-87, § 209, 93rd Cong., 1st Sess., 87 Stat. 250 (Aug. 13, 1973).

B. Under Ch. 46.52 RCW, WSP Has A Mandatory Obligation To Collect, File, Tabulate, Analyze And Publish Vehicle Accident Information.

RCW 46.52.060 provides in part:

It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency, whether any driver involved in the accident was distracted at the time of the accident and the circumstances thereof, and other statistical information which may prove of assistance in determining the cause of vehicular accidents....

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, the traffic safety commission, and other public entities authorized by the chief of the Washington state patrol, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value.

In furtherance of these duties, the Chief of WSP is mandated to collect detailed information about vehicle accidents, specifically including, but not limited to, the location of such accidents. See RCW 46.52.030(4) (specifying information to be collected by WSP on supplemental vehicle accident reports filled out by drivers); RCW 46.52.070(1) (requiring law enforcement officers to report in the same manner as required of parties to an accident); see also RCW 46.52.030(2) (requiring original reports to be immediately forwarded to the Chief of WSP).

The State argues that the records requested by Gendler are not generated or received by WSP for law enforcement purposes under

Ch. 46.52 RCW because they are also used by WSDOT for § 152 Hazard Elimination Program purposes. See State Pet. for Rev. at 15-16. This argument is premised on a misreading of Guillen II, which specifically contemplates that information collected for state law enforcement purposes is not privileged under § 409 simply because it is also used for § 152 purposes. See 537 U.S. at 144 (illustrating limits of § 409 by sheriff-public works department example).

The State's argument also appears to be premised on the incorrect assumption that the purposes described in RCW 46.52.060 are not law enforcement purposes. See State Supp. Br. at 1, 10. As indicated in the text of the statute, law enforcement purposes committed to the Chief of WSP include "determining the cause of vehicular accidents," and "regulation of highway traffic, highway construction, [and] vehicle operators," along with other unstated and presumably law enforcement-related purposes (i.e., "all other purposes").¹⁴ To fulfill these purposes, the data collected, filed, tabulated, analyzed and published necessarily includes the number of accidents at each location, along with the frequency and circumstances thereof. See RCW 46.52.060; see also Guillen I, 144 Wn.2d at 715 n.8 (explicating RCW 46.52.060).¹⁵

¹⁴ These other law enforcement purposes would include legal proceedings contemplated by RCW 46.52.080, and proceedings under the Financial Responsibility Act, Ch. 46.29 RCW. See WAC 308-102-130(3); WAC 308-102-140(3); WAC 308-102-255(2); WAC 308-102-260(3).

¹⁵ The State appears to make a separate but related point that WSP's state law enforcement purposes for receiving or generating vehicle accident records under RCW 46.52.060 are essentially federalized because WSDOT has influenced the composition of accident report forms, in furtherance of its obligations under the § 152 Hazard Elimination Program. See State Br. at 8; State Pet. for Rev. at 7 & n.2. WSP's

Next, the State argues that the records requested by Gendler involve greater accuracy and precision regarding location than is necessary for law enforcement purposes. See State Pet. for Rev. at 17; State Supp. Br. at 10. As recognized by the Court of Appeals below, the language of RCW 46.52.060 implies a certain level of accuracy and precision:

Certainly, there is one overriding purpose here and that is to improve the safety of our roadways. A report indicating only that a certain percentage of accidents occurred in King or Pierce County would serve no purpose other than an academic one. It would not and does not assist the WSP on where and when to assign troopers and it would not assist the WSP or anyone else in analyzing the causes of vehicular accidents, which is the express purpose that animates the obligation RCW 46.52.060 imposes on the WSP.

Gendler at 675.¹⁶

However, it is not apparent from the appellate briefing that Gendler is seeking to impose any particular degree of accuracy or precision on WSP's records. Instead, it appears that he is merely seeking the same level of accuracy and precision that is already reflected in the PTCRs, rather than the analysis of the PTCRs subsequently performed by WSDOT to determine accident location within 1/100th of a mile for

accommodation of WSDOT's requests in this regard do not diminish its separate purposes, and should be viewed as nothing more than routine inter-agency cooperation akin to the MOU. See Goza v. Parish of W. Baton Rouge, 21 So. 3d 320, 327-28 (La. App. 2009) (holding creation of accident report form for § 152 purposes does not negate state law enforcement purposes for filling out the form), *cert. denied*, 130 S. Ct. 3277 (2010).

¹⁶ The report by county mentioned by the Court of Appeals is the annual report submitted by the Chief of WSP to the legislature mentioned in RCW 46.52.060. See Gendler at 675. It is generated based on the raw data mentioned by the Court in Guillen I, 144 Wn.2d at 715 n.8.

purposes of compliance with the § 152 Hazard Elimination Program. See State Br. at 11; Gendler Br. at 30-31. In this sense, Gendler is not seeking any greater accuracy or precision than was available at the time of the Guillen I decision, before the MOU was executed, or even before § 152 was adopted in 1973. See Guillen I, 144 Wn.2d at 715 n.8 (referring to “raw data” including “location”); Gendler at 669 n.2 (quoting testimony describing level of precision available before 2003); Gendler Br. at 7-8.

C. The Requested Vehicle Accident Information Is Subject To Disclosure By WSP Under The PRA.

In Guillen I, this Court concluded that police accident reports (presumably PCTRs), and the data compiled by WSP pursuant to RCW 46.52.060—consisting of the number of accidents at the location in question, the frequency, and the circumstances thereof—was subject to public disclosure under the former PDA. See 144 Wn.2d at 715 & n.8.¹⁷ There is no reason why the result should be any different under the PRA.

The state-law basis for resisting public disclosure in Guillen I was the confidentiality provisions of Ch. 46.52 RCW, not the provisions of the former PDA. See RCW 42.17.260(1) (“other statute” exemption to former PDA); see also RCW 42.56.070(1) (“other statute” exemption to PRA). The provisions of Ch. 46.52 RCW limit confidentiality to “accident reports and supplemental reports” filled out by accident participants, see RCW 46.52.080, which are distinguished from the “investigator’s reports”

¹⁷ The State acknowledges the holding of Guillen I, as it applies to police accident reports, if not other vehicle accident records. See State Pet. for Rev. at 11; see also Wash. Atty. Gen. Op. No. 8 (Sept. 25, 2001) (noting Guillen I’s “clear holding” that RCW 46.52.080 does not exempt PTCRs from disclosure under the former PDA).

and other police accident reports referenced elsewhere in the chapter. See Guillen I at 714-15 & n.8; see also RCW 46.52.030(3); RCW 46.52.070; RCW 46.52.083.¹⁸ The rationale for confidentiality of reports filled out by accident participants does not extend to PTCRs or other vehicle accident records:

The apparent rationale for the confidentiality granted in RCW 46.52.080 is to protect the privacy and candor of those who, after being involved in an accident, are required by law to set forth the details of the event in a report (details which may include matters they would prefer to keep private or which could lead to embarrassment, negative publicity, or litigation). These same factors do not similarly apply to a public officer making a report after an investigation. Thus, it is argued there is no real public purpose in making the officers reports confidential. Although these considerations are not discussed in the recent Washington Supreme Court opinion [Guillen I] ... they would nonetheless support its conclusion.

Wash. Atty. Gen. Op. No. 8 (Sept. 25, 2001) (brackets & ellipses added); see also Guillen I, 144 Wn.2d at 714-15 & n.8.

Because the confidentiality provisions of Ch. 46.52 RCW do not apply to police accident reports or other vehicle accident data, they do not eliminate the public disclosure obligation either under the former PDA or the PRA. The holding in Guillen I is subject to the doctrine of stare decisis, and it should receive additional deference because it involves interpretation of a state statute by this Court. See In re Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970) (establishing rigorous “incorrect and harmful” test for overruling precedent); Redmond v. Growth Hearings

¹⁸ The current versions of RCW 46.52.080 and 46.52.083 are reproduced in the Appendix to this brief.

Bd., 136 Wn.2d 38, 53 n.7, 959 P.2d 1091 (1998) (recognizing special solicitude given to Court's interpretation of statute).¹⁹

D. The MOU Does Not Alter WSP's Obligations Under State Law, And If It Did It Would Be Unenforceable.

As noted above, the MOU between WSP and WSDOT is based upon the Interlocal Cooperation Act, Ch. 39.34 RCW. See MOU at 1. Under this Act, agencies of the state may enter into agreements with each other for joint or cooperative action. RCW 39.34.030(2). However, such agreements do not relieve a public agency of any obligation imposed by law. RCW 39.34.030(5) (stating "[n]o agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law," subject to exceptions not applicable here).²⁰ As a result, the MOU cannot alter the existence or nature of the obligations imposed on WSP under Ch. 46.52 RCW or the PRA.

In any event, nothing in the MOU itself alters WSP's obligations under state law. The MOU recognizes WSP's statutory authority to collect

¹⁹ The State argues that disclosure of vehicle accident records by location at any level of accuracy or precision greater than by county would cause "far more than mere administrative inconvenience," while acknowledging that it would be "technologically possible." See State Pet. for Rev. at 19. This argument seems to acknowledge, if only implicitly, that administrative inconvenience or difficulty does not excuse strict compliance with public disclosure obligations. See Zink v. City of Mesa, 140 Wn.App. 328, 337-38, 166 P.3d 738 (2007) (former PDA). This argument also seems to acknowledge that technical feasibility is not an issue. See Mechling v. City of Monroe, 152 Wn.App. 830, 849-50, 222 P.3d 808 (2009) (remanding for determination of feasibility under former PDA), *review denied*, 169 Wn.2d 1007 (2010). As a result, it is not clear whether the State is raising this argument as a defense to the PRA. See RCW 42.56.550(1) (placing burden of proof on agency resisting disclosure of public records); see also WAC 44-14-05003 (stating burden of proof should be on the agency to justify refusal to provide electronic records in particular). In any event, the argument seems to be linked to the State's other arguments about the accuracy and precision of WSP vehicle accident records by location, as opposed to the analysis performed by WSDOT that yields locations within 1/100th of a mile. See State Pet. for Rev. at 19.

²⁰ The current version of RCW 39.34.030 is reproduced in the Appendix to this brief.

vehicle accident reports. See MOU at 1 (noting collision records are “received by WSP under the authority granted to WSP by RCW 46.52.030”); id. at 4, ¶ 1(b) (stating “collision records are under the authority of the WSP”). The MOU confirms WSP’s ownership of vehicle accident reports, regardless of form. See id. at 1-2, ¶¶ 1(b) & 2 (referring to paper, electronic media versions and scanned images of reports); id. at 4, ¶ 1(b) (defining collision records to include microfilm, electronic images and original paper).

The MOU merely grants WSDOT access and a nonexclusive license to use the WSP reports. It does not in any respect limit WSP’s access to, or use of, the reports for its own purposes in complying with its obligations under RCW 46.52.060. Nor does it limit WSP’s ability to coordinate or delegate the performance of its own functions to WSDOT, consistent with Ch. 39.34 RCW.²¹

The MOU recognizes WSP’s obligation to disclose public records under applicable law. While the Collision Records Policy incorporated into the MOU treats a request for multiple police accident reports based solely on location as a request to WSDOT rather than WSP, this can only be understood in terms of inter-agency coordination or delegation rather

²¹ For example, WSP has apparently delegated to WSDOT responsibility for preparing its annual reports to the legislature from the data contained in the integrated database. See State Supp. Br. at 9. The State suggests that this delegation of responsibility was accomplished by means of the MOU, even though it is not mentioned in the MOU. However accomplished, this would appear to be consistent with the Electronic Access to Public Records Act, see RCW 43.105.250 (recognizing that electronic methods for locating and transferring information can improve access to information and government services, and encouraging “state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives”).

than an elimination of WSP's statutory duties. Otherwise, the MOU would violate RCW 39.34.030(5).²²

The State further argues that, under the terms of the MOU, the WSP vehicle accident records are no longer "held" by WSP, within the meaning of § 409, as interpreted by the U.S. Supreme Court in Guillen II. See State Pet. for Rev. at 16. As an initial matter, it is problematic to speak in terms of "holding" electronic records, as opposed to hard-copy documents. With electronic records, possession should be equated with ownership or access.²³ To the extent that WSP retains ownership of, and access to, its vehicle accident records under the MOU, the agency should be deemed to be holding its own records within the meaning of Guillen II.²⁴ If WSP were not deemed to be holding its own records any longer,

²² The State quotes a memorandum prepared by the Federal Highway Administration (FHA) following the U.S. Supreme Court's decision in Guillen II, offering that federal agency's interpretation of the decision. See Gendler at 668; State Pet. for Rev. at 10; State Supp. Br. at 6. The memorandum suggests that, under Guillen II, the § 409 privilege would apply to "integrated databases" containing crash reports, regardless of the agency that may possess or retrieve a report, reasoning that it would be stored in the database, at least in part, for § 409 purposes. The State does not appear to be arguing that the FHA's interpretation of Guillen II is entitled to any deference, let alone the deference that would be accorded to an agency's interpretation of a statutory scheme it is entrusted to administer. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). The memorandum addresses a legal issue that is for the Court to resolve and should be given no deference. In any event, the FHA interpretation is at odds with the narrow construction of the § 409 privilege mandated by Guillen II, and does not account for the independent state statutory duty to collect, file, tabulate, analyze and publish vehicle accident data imposed on WSP under RCW 46.52.060.

²³ Cf. RCW 9A.52.110 (indicating crime first degree "computer trespass" can be based on "access" to another person's "electronic database"); RCW 9A.52.120 (same for second degree computer trespass); RCW 9A.52.010 (defining "access" as storing data in, or retrieving data from, a computer).

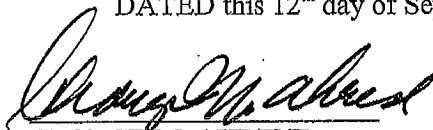
²⁴ In a recent opinion regarding storage of otherwise discoverable records in an electronic database that included privileged information, the Court of Appeals held that, under state law, the defendant institution was obligated to internally access the database to retrieve the discoverable records, and that any other result would frustrate the purpose of the discovery rules. See Lowy v. PeaceHealth, 159 Wn.App. 715, 247 P.3d 7 (2011) (compelling discovery of medical charts based on search of database, which contained information privileged under RCW 70.41.200), *review granted*, 171 Wn.2d 1027 (2011).


then it would be in violation of its mandatory statutory obligation to collect, file, tabulate, analyze and publish its records under RCW 46.52.060. If this were the intent or effect of the MOU, it would again violate RCW 39.34.030(5).

VI. CONCLUSION

The Court should adopt the analysis set forth in this brief regarding the interface between state and federal law, as interpreted by this Court and the U.S. Supreme Court in their respective opinions in Guillen, and resolve this appeal accordingly.

DATED this 12th day of September, 2011.


GEORGE M. AHREND


FOR BRYAN P. HARNETIAUX
WITH AUTHORITY

On behalf of WSAJ Foundation

Appendix

RCW 39.34.030. Joint powers--Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies--Financing of joint projects

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter, except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation, partnership, or limited liability company shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall contain, in addition to provisions specified in subsection (3)(a), (c), (d), (e), and (f) of this section, the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies that are party to the agreement shall be represented; and

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board".

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law.

[2009 c 202 § 6, eff. July 26, 2009. Prior: 2008 c 198 § 2, eff. June 12, 2008; 2004 c 190 § 1, eff. June 10, 2004; 1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

RCW 46.52.030. Accident reports

(1) Unless a report is to be made by a law enforcement officer under subsection (3) of this section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within four days after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns. Nothing in this subsection prohibits accident reports from being filed by drivers where damage to property is less than the minimum amount or where a law enforcement officer has submitted a report.

(2) The original of the report shall be immediately forwarded by the authority receiving the report to the chief of the Washington state patrol at Olympia, Washington. The Washington state patrol shall give the department of licensing full access to the report.

(3) Any law enforcement officer who investigates an accident for which a report is required under subsection (1) of this section shall submit an investigator's report as required by RCW 46.52.070.

(4) The chief of the Washington state patrol may require any driver of any vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report in the chief's opinion is insufficient, and may likewise require witnesses of any such accident to render reports. For this purpose, the chief of the Washington state patrol shall prepare and, upon request, supply to any police department, coroner, sheriff, and any other suitable agency or individual, sample forms of accident reports required hereunder, which reports shall be upon a form devised by the chief of the Washington state patrol and shall call for sufficiently detailed information to disclose all material facts with reference to the accident to be reported thereon, including the location, the circumstances, the conditions then existing, the persons and vehicles involved, the insurance information required under RCW 46.30.030, personal injury or death, if any, the amounts of property damage claimed, the total number of vehicles involved, whether the vehicles were legally parked, legally standing, or moving, whether such vehicles were occupied at the time of the accident, and whether any driver involved in the accident was distracted at the time of the accident. Distractions contributing to an accident must be reported on the accident form and include at least the following minimum reporting options: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown.

Every required accident report shall be made on a form prescribed by the chief of the Washington state patrol and each authority charged with the duty of receiving such reports shall provide sufficient report forms in compliance with the form devised. The report forms shall be designated so as to provide that a copy may be retained by the reporting person.

(5) The chief of the Washington state patrol shall adopt rules establishing the accident-reporting threshold for property damage accidents. Beginning October 1, 1987, the accident-reporting threshold for property damage accidents shall be five hundred dollars. The accident-reporting threshold for property damage accidents shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision.

[2005 c 171 § 1, eff. Jan. 1, 2006; 1997 c 248 § 1; 1996 c 183 § 1; 1989 c 353 § 5; 1987 c 463 § 2; 1981 c 30 § 1; 1979 c 158 § 160; 1979 c 11 § 2. Prior: 1977 ex.s. c 369 § 2; 1977 ex.s. c 68 § 1; 1969 ex.s. c 40 § 2; 1967 c 32 § 54; 1965 ex.s. c 119 § 1; 1961 c 12 § 46.52.030; prior: 1943 c 154 § 1; 1937 c 189 § 135; RRS § 6360-135.]

RCW 46.52.060. Tabulation and analysis of reports--Availability for use

It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency, whether any driver involved in the accident was distracted at the time of the accident and the circumstances thereof, and other statistical information which may prove of assistance in determining the cause of vehicular accidents. Distractions contributing to an accident to be reported must include at least the following: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown.

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, the traffic safety commission, and other public entities authorized by the chief of the Washington state patrol, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value.

[2005 c 171 § 2, eff. Jan. 1, 2006; 1998 c 169 § 1; 1979 c 158 § 161; 1977 c 75 § 67; 1967 c 32 § 56; 1961 c 12 § 46.52.060. Prior: 1937 c 189 § 138; RRS § 6360-138.]

RCW 46.52.070. Police officer's report

(1) Any police officer of the state of Washington or of any county, city, town, or other political subdivision, present at the scene of any accident or in possession of any facts concerning any accident whether by way of official investigation or otherwise shall make report thereof in the same manner as required of the parties to such accident and as fully as the facts in his or her possession concerning such accident will permit.

(2) The police officer shall report to the department, on a form prescribed by the director:
(a) When a collision has occurred that results in a fatality; and (b) the identity of the operator of a vehicle involved in the collision when the officer has reasonable grounds to believe the operator caused the collision.

(3) The police officer shall report to the department, on a form prescribed by the director:
(a) When a collision has occurred that results in a serious injury; (b) the identity of the operator of a vehicle involved in the collision when the officer has reasonable grounds to believe the operator who caused the serious injury may not be competent to operate a motor vehicle; and (c) the reason or reasons for the officer's belief.

[2010 c 8 § 9060, eff. June 10, 2010; 1999 c 351 § 2; 1998 c 165 § 8; 1967 c 32 § 57; 1961 c 12 § 46.52.070. Prior: 1937 c 189 § 139; RRS § 6360-139.]

**RCW 46.52.080. Confidentiality of reports--Information required to be disclosed--
Evidence**

All required accident reports and supplemental reports and copies thereof shall be without prejudice to the individual so reporting and shall be for the confidential use of the county prosecuting attorney and chief of police or county sheriff, as the case may be, and the director of licensing and the chief of the Washington state patrol, and other officer or commission as authorized by law, except that any such officer shall disclose the names and addresses of persons reported as involved in an accident or as witnesses thereto, the vehicle license plate numbers and descriptions of vehicles involved, and the date, time and location of an accident, to any person who may have a proper interest therein, including the driver or drivers involved, or the legal guardian thereof, the parent of a minor driver, any person injured therein, the owner of vehicles or property damaged thereby, or any authorized representative of such an interested party, or the attorney or insurer thereof. No such accident report or copy thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that any officer above named for receiving accident reports shall furnish, upon demand of any person who has, or who claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the chief of the Washington state patrol solely to prove a compliance or a failure to comply with the requirement that such a report be made in the manner required by law: PROVIDED, That the reports may be used as evidence when necessary to prosecute charges filed in connection with a violation of RCW 46.52.088.

[1979 c 158 § 162; 1975 c 62 § 15; 1967 c 32 § 58; 1965 ex.s. c 119 § 3; 1961 c 12 § 46.52.080. Prior: 1937 c 189 § 140; RRS § 6360-140.]

RCW 46.52.083. Confidentiality of reports--Availability of factual data to interested parties

All of the factual data submitted in report form by the officers, together with the signed statements of all witnesses, except the reports signed by the drivers involved in the accident, shall be made available upon request to the interested parties named in RCW 46.52.080.

[1965 ex.s. c 119 § 4.]

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MEMORANDUM OF UNDERSTANDING
BETWEEN

STATE OF WASHINGTON
WASHINGTON STATE PATROL

AND

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

This Memorandum of Understanding (MOU), pursuant to Chapter 39.34 RCW, is made and entered into by and between the Washington State Patrol, ATTN: ACCESS/WACIO Section, PO Box 42619, Olympia WA 98504-2619, hereinafter referred to as "WSP;" and the Washington State Department of Transportation, ATTN: Transportation Data Office, PO Box 47830, Olympia WA 98504-7830, hereinafter referred to as "WSDOT."

The purpose of this MOU is to grant WSDOT access to collision records, as provided by the 2003-2005 enacted biennium budget for WSDOT, program T, received by WSP under the authority granted to WSP by RCW 46.52.030.

1. Responsibilities.

- a. Unit Co-location. WSDOT shall provide all equipment and services necessary for the storage of Police Traffic Collision Reports (PTCR) and Vehicle Collision Reports (VCR; also known as Citizen Driver Reports) received by WSP in both paper and electronic media. WSDOT shall also provide the necessary workspace and equipment to co-locate WSP's Collision Records Section with WSDOT's Transportation Data Office. WSDOT shall provide at least thirty (30) calendar days' notice to WSP prior to any change in information technology organization, software or hardware that could affect WSP's access to these reports.
- b. Access to Reports. WSP grants to WSDOT access to both paper and electronic media version of all PTCR and VCR/Citizen Reports received by WSP.
- c. Retention of Reports. Once the paper reports are successfully scanned the paper copy can be destroyed immediately, as the scanned image is the report of record. The scanned report image must be kept in accordance with the record retention schedule as established by the Secretary of State.
- d. Information Disclosure. Both WSP and WSDOT shall disclose collision record information to the public in accordance with RCW 46.52.080, RCW 46.52.083, Chapter 42.17 RCW, and Exhibit A, Collision Records Policy, which is attached hereto and incorporated in this MOU.
- e. Collection of Fees. All fees collected in accordance with Chapter 46.52 RCW shall be managed per Exhibit A, and accounted for by WSP's Budget and

Fiscal Services. WSP shall provide WSDOT with a copy of monthly cash journal warrant registers detailing the fees collected for collision record information disclosure. Both parties shall comply with Office of Financial Management regulations regarding cash handling.

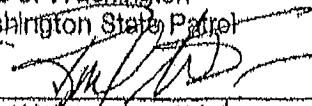
2. **Rights In Data.** Both parties acknowledge that the original PTCR and VCR/Citizen Reports and scanned images of those reports are the property of WSP, however, WSP grants to WSDOT a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of copies of the scanned images of PTCR and VCR/Citizen Reports. Data collected and tabulated by WSDOT from those reports is the property and responsibility of WSDOT.
3. **Period of Performance.** Subject to its other provisions, the period of performance of this MOU shall commence on July 1, 2003, and shall continue until terminated as provided in this MOU.
4. **WSP Staff.** WSP staff providing services under the terms of this MOU shall be under the direct command and control of the Chief of WSP or designee and shall perform the duties required by this MOU in a manner consistent with WSP policy and regulations, applicable state and local laws, and the Constitutions of the State of Washington and the United States. The assignment of personnel to accomplish the purpose of this MOU shall be at the discretion of the Chief of WSP or designee.
5. **MOU Management.** The work described in this MOU shall be performed under the coordination of Mr. Roger E. Horton of WSDOT, and Lieutenant Sean J. Hartsock of WSP, or their successors. They shall provide assistance and guidance to the other party necessary for the performance of this MOU.
6. **Indemnification.** Each party shall defend, protect and hold harmless the other party from and against all claims, suits and/or actions arising from any negligent or intentional act or omission of that party's employees, agents, and/or authorized subcontractor(s) while performing this MOU.
7. **MOU Alterations and Amendments.** This MOU may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
8. **Termination.** Except as otherwise provided in this MOU, either party may terminate this MOU, upon thirty (30) days' written notification to the other party. If this MOU is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this MOU for performance prior to the effective date of termination.
9. **Disputes.** In the event that a dispute arises under this MOU, it shall be determined in the following manner: The Chief of WSP shall appoint one member to the Dispute Board. WSDOT shall appoint one member to the Dispute Board. The Chief of WSP and WSDOT shall jointly appoint an additional member to the Dispute

Board. The Dispute Board shall evaluate the dispute and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. If applicable and as an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

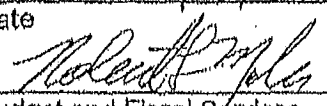
10. **Complete Agreement.** This MOU contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this MOU.

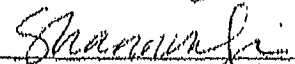
State of Washington
Washington State Patrol


Ronal W. Serpas, Chief

Date



Budget and Fiscal Services

Date


Assistant Attorney General

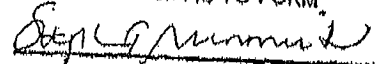
Date

State of Washington
Department of Transportation


Douglas B. MacDonald, Secretary

Date

APPROVED AS TO FORM


ASSISTANT ATTORNEY GENERAL

12/10/03

Collision Records Policy

1. Introduction**a. Purpose**

To establish policy for the release of collision records and collision data collected, prepared and maintained by the Washington State Department of Transportation's (WSDOT) Collision Data and Analysis Branch, and the Washington State Patrol's (WSP) Collision Records Section, for use in conjunction with assigned areas of responsibility.

b. Definitions

Collision Record - For purposes of this policy statement, the term "collision record" will include copies of Police Traffic Collision Reports (PTCR), Vehicle Collision Report Forms (VCR; also known as citizen or driver reports) and supporting documents derived from microfilm images, electronic images and original paper forms. These collision records are under the authority of the WSP, located at the WSDOT Transportation Data Office, and constitute the official public record of the collision.

Collision Data - For purposes of this policy statement, the term "collision data" will include:

- WSDOT electronic files containing data derived from PTCRs, VCR/Citizen Report Forms, and supporting documents. These files may reside in mainframe or server computer systems.
- Computer printouts derived from these WSDOT electronic files. These printouts can contain information about individual collisions, including location, date, time, severity, and collision type; or they can contain summary totals for collisions occurring within a specific jurisdiction, such as city, county, or state.

Unit - The term "Unit" refers to the combined interagency unit consisting of the WSDOT Collision Data and Analysis Branch and the WSP Collision Records Section.

2. Disclosure Policies**a. Disclosure Requests for the Police Traffic Collision Report (PTCR) Form**

- 1) All public disclosure requests for copies of any PTCR must be submitted in writing on DOT Form 780-030 "Request for Copy of Collision Report" to the WSDOT's Collision Records Request Section, located in the Transportation Data Office in Olympia. The person requesting the copy may elect to receive it by mail or fax, or they may choose to obtain the copy in person at the Transportation Data Office.

- 2) For each copy requested, a reasonable charge as specified in RCW 46.52.085 will be imposed to reimburse the WSP for the record search. No search will be conducted until the requestor has completed a written application and paid this search fee. Checks shall be made payable to "Washington State Patrol."
 - 3) Upon payment of the search fee, once the requested copy has been located the Unit will convey it to the person who requested it in the manner they specified within five business days, without redaction.
 - 4) The Request for Copy of Collision Report Form will serve as the requestor's five (5) business day public disclosure request notification. Any requestor not completing the form in person shall have a form completed for them by WSP personnel and a copy of the form shall be mailed to the requestor.
 - 5) Searches for PTCRs must be based on an involved person's name or a report number. Any request for multiple reports based solely on a location will be treated as a request for collision data, and the request will be referred to the WSDOT's Collision Data and Analysis Branch (see below).
 - 6) In the event it is determined that a pre-existing restraining order or other legal restriction prevents the disclosure of a requested PTCR, the request will be denied. The requesting party will receive a denial letter, signed by the WSDOT Public Records Officer, within five business days of the request denial determination.
 - 7) WSDOT will pre-authorize PTCR denials through the WSP public disclosure office.
 - 8) WSP shall deposit the funds according to state regulations and deliver the receipt daily to the WSP Budget and Fiscal Services office.
- b. Disclosure Requests for the Vehicle Collision Report (VCR/Citizens Report) Form**
- 1) Only those persons who may have a proper interest are eligible to receive a copy of a VRC/Citizen Report Form, as specified in RCW 46.52.080. These persons are:

- a. Any driver involved in the collision.
 - b. The legal guardian of any driver involved in the collision.
 - c. The parent of any minor driver involved in the collision.
 - d. Any person injured in the collision.
 - e. The owner of any vehicle or property damaged in the collision.
 - f. Any authorized representative, attorney or insurer of any of the persons cited in subsections 1 a) through 1 e) above.
- 2) All requests for copies of VCR/Citizen Report must be submitted in writing on DOT Form 780-030 "Request for Copy of Collision Report" to the WSDOT's Collision Records Request Section, located in the Transportation Data Office in Olympia. The person requesting the copy may elect to receive it by mail or fax, or they may choose to obtain the copy in person at the WSDOT Transportation Data Office.
 - 3) For each copy requested, a reasonable charge as specified in RCW 46.52.085 will be imposed to reimburse the WSP for the record search. No search will be conducted until the requestor has paid this search fee. Checks shall be made payable to "Washington State Patrol."
 - 4) Upon payment of the search fee and if located, a complete copy of the requested VCR/Citizen Report Form must be provided by the Unit to either:
 - a. The person who signed the requested VCR/Citizen Report Form; or
 - b. The attorney representing the person who signed the requested VCR/Citizen Report Form
 - 5) Upon payment of the search fee and if located, a redacted copy of the requested VCR/Citizen Report Form must be provided by the Unit to any of the eligible persons cited in subsections 1 a) through 1 f) above, with the exception of those persons cited in subsections 4 a) and 4 b) above. As stipulated in RCW 46.52.080, the only information available in the redacted copy of the requested VCR/Citizen Report Form provided to these persons is:
 - The names and addresses of those persons reported as involved in the collision.
 - The vehicle license plate numbers and descriptions of vehicles involved in the collision.
 - The date, time and location of the collision
 - 6) The Request for Copy of Collision Report Form will serve as the requestor's five (5) business day public disclosure request notification. Any requestor not completing the form in person shall have a form completed for them by WSP personnel and a copy of the form shall be mailed to the requestor.

- 7) Searches for VCR/Citizen Report Forms must be based on an involved person's name or a report number. Any request for reports based solely on a specific location will be treated as a request for collision data, and the request will be referred to the WSDOT's Collision Data and Analysis Branch (see below).
- 8) In the event it is determined that a pre-existing restraining order or other legal restriction prevents the disclosure of a requested VCR/Citizen Report Form, or the person making the request is not entitled under RCW 46.52.080 to receive a copy of the VCR/Citizen Report Form, then the request will be denied. The requesting party will receive a denial letter, signed by the WSDOT Public Records Officer, within five business days of the request denial determination.

3. Audit Functions

The entire collision records function will be subject to a WSP audit and inspection on an annual basis or as deemed appropriate by the Chief of the State Patrol or his/her designee.

4. Financial Issues

The WSP Business Office will perform monthly audits to ensure compliance with the signed inter-agency agreement.

5. Rules

a. Forms

- 1) All forms used in conjunction with the collision records function will be approved by the WSP and contain the official State Patrol logo.
- 2) WSDOT will be responsible for printing and providing all forms used in conjunction with the collision records function.

b. WSP Public Disclosure Manager

The WSP process for responding to requests for public records is managed by the WSP Evidence Records Division. The WSP Collision Records Manager, on behalf of the WSP Evidence Records Division, will refer persons requesting collision records or collision data to the appropriate sections within WSDOT following established WSP policy and procedures. The WSP public disclosure policy will control the release of all PCTR and VCR/Citizens Reports.

c. DOT Public Records Officer

The WSDOT process for responding to requests for public records is managed by the WSDOT Records and Information Services Office, Finance and Administration Division. The WSDOT Public Records Officer will refer persons requesting collision records or collision data to the appropriate sections within WSDOT.

d. Collision Records Section Manager

WSP's Collision Records Section Manager reports to the WSP Collision Records Section Commander. The WSP Collision Records Section Manager and his/her

subordinates will respond to written requests for public disclosure of collision records maintained at the WSDOT Transportation Data Office. The WSP Collision Records Section will be available to serve the public Monday through Friday, excluding legal holidays.

- e. **Collision Data and Analysis Branch Manager**
WSDOT's Collision Data and Analysis Branch Manager reports to the WSDOT Transportation Data Office General Manager. The WSDOT Collision Data and Analysis Branch Manager and his/her subordinates will respond to written public information requests for collision data maintained at the WSDOT Transportation Data Office. The WSDOT Collision Data and Analysis Branch will be available to serve the public Monday through Friday, excluding legal holidays. The WSP public disclosure policy will control the release of all PCTR and VCR/Citizen Reports. The WSDOT public disclosure policy will control the release of all collision data.